Filed 2/10/09 In re E.C. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.C., a Person Coming Under the Juvenile Court Law.	B206051
THE PEOPLE, Plaintiff and Respondent, v. E.C., Defendant and Appellant.	(Los Angeles County Super. Ct. No. FJ40010)

APPEAL from an order of the Superior Court of Los Angeles County. Shep Zebberman, Referee. Affirmed.

Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

E.C. appeals from an order taking her from the physical custody of her mother (mother) and placing her in the custody of the Department of Children and Family Services (the department) for suitable placement. She contends the juvenile court failed to make the requisite statutory findings. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2007, an amended Welfare and Institutions Code section 602 (all undesignated statutory references are to this code) petition was sustained after 15-year-old E.C. admitted committing grand theft (count 4).[1] E.C. was placed home on probation. The conditions of her probation included that she obey all laws (condition No. 1); obey all instructions of parent, teachers, and school authorities (condition No. 2); attend school, maintain satisfactory grades and attendance, and notify the probation officer of every absence (condition No. 9); submit to drug and alcohol testing (condition No. 24); participate in the Juvenile Alternative Work Services (JAWS) Program for a period of 10 days (condition No. 39); and participate in after-school activities directed by the probation officer (condition No. 41).

Over the next several months, E.C.'s probation officer, Toni Beamon, reported that E.C. was chronically truant; although E.C. and mother told Beamon that E.C. had been ill, they failed to comply with Beamon's direction to provide verification from a doctor. On October 22, 2007, Beamon filed notice of probation violation under section 777; the notice alleged that "the previous disposition has not been effective in the rehabilitation of the minor in that the minor has violated" specified probation terms. Beamon alleged, "There is a lack of parental control and failure to comply with the orders of the court or the direction of the probation officer. Therefore, the probation officer recommends the minor [be] suitably placed." E.C. denied the allegations.

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[1] The original petition alleged E.C. committed three second degree robberies (counts 1, 2 & 3). These counts were dismissed when the court added the grand theft charge.

In a progress report filed after the matter was set for hearing, Beamon noted that E.C. had provided some documentation of her medical treatment and submitted to a drug test. Attached to the report were the following documents Beamon received from E.C.:

- Medical Benefits I.D. card indicating an issue date of October 6, 2006;
- Confirmation from HealthNet that effective January 1, 2007, E.C. had selected IPA of California (IPA) as her group provider;
- Two IPA forms, both dated February 9, 2007, approving various medical services;
- An IPA referral form indicating E.C. had been seen by a doctor on October 15, 2007, and referred to a specialist;
- A patient information form for E.C. dated October 17, 2007;
- IPA authorizations for medical services dated October 18, 2007 and November 1, 2007;
- Note from Larchmont Radiology Medical Group dated November 8, 2007, which states, "Patient was seen at our office for some exams."

At the hearing on December 12, Beamon testified that during the Fall 2007 semester (July 2 – Oct. 25), E.C. had been absent five full days and one partial day through July 19th; beginning July 23rd through the last day of the semester, E.C. missed at least three classes every day, and on some days she was absent from school all day. E.C. and mother both told Beamon that E.C. had been too ill to attend school, but they had not provided Beamon with a doctor's verification. In November 2007, after the section 777 notice was filed, E.C. gave Beamon documents indicating only that E.C. had several medical appointments during the relevant time period, but nothing that stated E.C. had been too ill to attend school altogether. E.C. had requested that she be allowed to participate in Tele-teaching, which is a program designed to allow chronically ill students to be homeschooled. The only drug test to which E.C. had submitted was in November, after the section 777 notice had been filed (condition No. 24). Moreover, until the notice was filed, E.C. did not participate in the counseling, therapy, and community service programs, which Beamon had directed her to attend (condition No. 41). Because of

E.C.'s ongoing truancy, her failure to participate in the programs, and an apparent lack of parental control, Beamon recommended that E.C. be removed from mother's custody and suitably placed by the department.

Nadia Morales, the academic counselor at E.C.'s high school, testified that she spoke to E.C. and mother about E.C.'s attendance problem; E.C. and mother both told Morales that E.C. had been ill. On August 21, 2007, mother told Morales that E.C. had not come home the night before and her whereabouts were unknown. Morales advised mother to make a police report. The next day, mother told Morales that E.C. was at a friend's home, but when mother sent E.C.'s aunt to bring E.C. home, E.C. refused. Morales advised mother to personally go to where E.C. was staying and tell her to come home. The next day, mother told Morales that E.C. had returned home. Thereafter, E.C. and mother attended scheduled meetings with Morales, but E.C. continued to be truant. When E.C. complained to Morales about stomach pains, Morales advised mother to take E.C. to the doctor, but when Morales called to check up on E.C., mother had not done so. When Morales discussed the matter with probation officer Beamon in late August, Beamon said she would handle the matter and Morales left it in Beamon's hands.

The juvenile court sustained all three counts of the section 777 notice. It observed that there was no evidence that E.C. was unable to attend school, only evidence that she had medical tests on certain dates: "And it's pretty clear to me from the evidence provided that she hasn't been going to school. She hasn't cleared her absences, she hasn't reported to her probation officer . . . . She hasn't drug tested. And . . . she's also ran away from home . . . ." It concluded: "The minor is hereby declared to be a ward of the court under Welfare and Institutions Code section 602. The court finds that continuance in the home would be contrary to the minor's welfare. Reasonable efforts were made and will continue to be made to prevent or eliminate the need for removal [of] the minor from the home and to make it possible for the minor to safely return to the minor's home; the custody of the minor is hereby taken from the parents or guardians; the minor is committed to the care, custody and control of the probation officer for suitable placement as detailed in the juvenile court's suitable placement order form under the

existing terms and condition of probation . . . . [¶] . . . She's to be detained pending placement. It is a matter of urgent necessity for the protection of the minor and the person and property of others. Continuance in the home of the parent or guardian is contrary to the minor's welfare. Temporary placement and care is vested with the probation department pending disposition or further court order. . . ." Despite its statements at the hearing, the box on the preprinted minute order, which states, "THE COURT FINDS: Welfare of minor requires that custody be taken from parents or guardians," was not checked.[2]

E.C. filed a timely notice of appeal.

DISCUSSION

1. *The Juvenile Court's Findings Satisfy Section 726*

E.C.'s sole contention is that the juvenile court failed to make any of the specific findings required by section 726, subdivision (a), which provides that "no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds *one* of the following facts: [¶] (1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor. [¶] (2) That the minor has been

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[2] On the minute order, the boxes were checked that state: "Minor is ordered SUITABLY PLACED [in an] open facility," and "[c]ustody of minor is taken from the parents or guardians [and] minor is placed in the care, custody and control of Probation Officer." The box indicating the petition is sustained was not checked, but the following typed lines appeared on the minute order: "The court finds that counts 1, 2 & 3 of the [section 777 petition] are true and the petition is sustained." The box stating: "Welfare of minor requires that custody be taken from parents or guardians," was not checked. Also not checked was the box stating: "There is a substantial danger to the physical/emotional health of the minor; no reasonable means exist to protect the minor without removal from the parents'/guardians' physical custody; and reasonable efforts have been made, and will continue to be made, to prevent/eliminate the need for removal from his or her home and make it possible to return the minor to his or her home." The minute order was not signed.

tried on probation while in custody and has failed to reform. [¶] (3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian." (See also Cal. Rules of Court, rule 5.790(d), italics added.)[3] E.C. argues that (1) the finding that continuing to reside in the home "would be contrary to the minor's welfare" is insufficient to satisfy section 726, subdivision (a)(3); and (2) the finding that E.C. violated the conditions of her probation is insufficient to satisfy section 726, subdivision (a)(2). We conclude that the juvenile court's findings satisfied paragraphs (2) and (3) of section 726, subdivision (a).

2. *Section 726, Subdivision (a)(3)*

In *In re Kenneth H.* (1983) 33 Cal.3d 616, 621 (*Kenneth H.*), our Supreme Court held, " 'By its express terms, Welfare and Institutions Code section 726 requires a finding *only* in the language of the statute. [¶] . . . Additional, express findings are neither mandated by any provision of the State of California Constitution, nor the United States Constitution, nor by any section of the Welfare and Institutions Code, nor by the decisional law of this state. . . .' [Citation.]" (See also 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 893, pp. 1089-1090 [*Kenneth H.* requires findings only in language of statute, i.e., additional, express findings are not necessary]; but see *In re Nathan W.* (1988) 205 Cal.App.3d 1496, 1500 (*Nathan W.*), [express finding that "continued custody by the parent or guardian would be detrimental to the minor" is required where the grounds for removal is the welfare of the child under section 726,

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3 California Rules of Court, rule 5.790(d) provides: "The court must not order a ward removed from the physical custody of a parent or guardian unless the court finds: [¶] (1) The parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child; [¶] (2) The child has been on probation in the custody of the parent or guardian and during that time has failed to reform; or [¶] (3) The welfare of the child requires that physical custody be removed from the parent or guardian."

subdivision (a)(3)].)[4] In *Kenneth H.*, the issue was whether it was sufficient that on the disposition order, the box next to the recital of former section 726, subdivision (b) (see current § 726, subd. (a)(2)) was checked. The court concluded that it was sufficient. (*Kenneth H.*, at pp. 620-621.)

Here, line 17 of the preprinted minute order form recites the language of section 726, subdivision (a)(3), and line 18 of the form states: "There is substantial danger to the physical/emotional health of the minor; no reasonable means exist to protect the minor without removal from the parents'/guardians' physical custody; and reasonable efforts have been made, and will continue to be made, to prevent/eliminate the need for removal from his or her home and make it possible to return the minor to his or her home." But neither line is checked and, in any case, the minute order is not signed. However, the absence of a formal minute order entry reciting the statutory language is not determinative; it is sufficient if the reporter's transcript of the proceedings shows "the substance of a finding . . . within that section." (See *In re John S.* (1978) 83 Cal.App.3d 285, 292-293 (*John S.*) [section 726 findings do not have to be in the precise language of statute].)

At the hearing, the juvenile court found that "continuance in the home would be contrary to the minor's welfare." It also found that "[r]easonable efforts were made and will continue to be made to prevent or eliminate the need for removal [of] the minor from the home and to make it possible for the minor to safely return to the minor's home . . . ." And, it found that it was "a matter of urgent necessity for the protection of the minor . . . .

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[4] In *Nathan W.*, the appellate court rejected the minor's contention that the trial court erred in failing to find that continued parental custody would be detrimental, finding that the dispositional order did not remove the minor from his parents' physical custody. (205 Cal.App.3d at p. 1499.) In dicta, it noted that former California Rules of Court, rule 1372(b)(3) provided that no ward could be taken from the physical custody of a parent unless the court made one of several findings; one such finding was "that continued custody by the parent or guardian would be detrimental to the minor and the welfare of the minor requires that custody [be] taken from the parent or guardian." (*Nathan W.*, at p. 1500.) But current California Rules of Court, rule 5.790 no longer requires a finding of detriment; only the findings required by section 726, subdivision (a).

Continuance in the home of the parent or guardian is contrary to the minor's welfare." We conclude that, combined, these three findings are substantially the finding required by section 726, subdivision (a)(3) that "welfare of the minor requires that . . . custody be taken from . . . parents . . . ." (*John S., supra,* 83 Cal.App.3d at pp. 292-293.)

E.C.'s reliance on two messy-house cases, *In re Paul E.* (1995) 39 Cal.App.4th 996 (*Paul E.*) and *In re Jeannette S.* (1979) 94 Cal.App.3d 52 (*Jeannette S.*), for a contrary result is misplaced. In *Paul E.*, the court reversed an order removing an autistic child from the custody of his developmentally disabled mother, finding that chronic messiness, absent unsanitary conditions or resulting illness or accident, does not justify removal under section 361. (*Paul E.*, at p. 999.) In *Jeannette S.*, the court reversed an order removing a child from the custody of her mother, finding that a reasonable alternative to taking custody from the mother was "stringent conditions of supervision" by the department. (*Jeannette S.*, at p. 60.)

Both cases are inapposite. First, the issue in both cases was the sufficiency of the evidence that removal was warranted, whereas here, E.C. does not challenge the sufficiency of the evidence to support the requisite findings; she contends only that the juvenile court did not make those findings. Second, in *Paul E.* and *Jeannette S.*, the courts found the welfare of the children could be protected by alternatives to removal; but here, implicit in the juvenile court's finding that reasonable efforts had been made to prevent or eliminate the need for E.C.'s removal, and that it was a matter of urgent necessity, is a finding that there were no alternatives to protect E.C. other than removing her from mother's custody. For these reasons, the cases relied upon by E.C. do not compel a contrary result.

3. *Section 726, Subdivision (a)(2)*

The juvenile court's findings also satisfied section 726, subdivision (a)(2) [failure to reform while on probation]. This is because a finding that the minor violated a condition of probation is equivalent to a finding that the minor failed to reform on probation and satisfies section 726 subdivision (a)(2). (*Nathan W., supra,*

105 Cal.App.3d at pp. 1501-1502; *In re Robert M.* (1985) 163 Cal.App.3d 812, 819 [finding that minor violated a condition of probation "is essentially the same finding as subdivision (b) of section 726 which permits removal from parental custody when a court finds: 'That the minor has been tried on probation in such custody and has failed to reform' "].)

Here, in sustaining the section 777 petition, the juvenile court necessarily found that E.C. had violated the conditions of her probation. This was sufficient to satisfy the section 726, subdivision (a)(2) requirement of a finding that the minor had been tried on probation but failed to reform.

4. *No Requirement of a Finding That Prior Disposition Was Ineffective*

Also without merit is E.C.'s assertion that the juvenile court's findings were inadequate because there was no finding that the prior disposition was ineffective.

Former section 777 required a finding that "the previous disposition has not been effective in the rehabilitation or protection of the minor." (See also former Cal. Rules of Court, rule 1392(d)(1)(B) [requiring true or not true finding on the allegation that the previous disposition has not been effective in the rehabilitation or protection of the minor].) But Proposition 21, passed by voters on March 7, 2000 (Stats. 1989, ch. 1117, § 18, p. 4127), eliminated the requirement of a finding that " 'the previous disposition has not been effective in the rehabilitation or protection of the minor' . . . substituting instead the grounds that either 'the minor has violated an order of the court' (§ 777, subd. (a)(1)) or the minor has violated a 'condition of probation' (§ 777, subd. (a)(2))." (*In re Brent F.* (2005) 130 Cal.App.4th 1124, 1127.) Here, the juvenile court's finding that E.C. had violated conditions of her probation satisfied section 777. E.C.'s reliance on *In re Joe A.* (1986) 183 Cal.App.3d 11, for a contrary result is misplaced because it was decided under the prior law.

DISPOSITION

The order is affirmed.

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RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

O'NEILL, J.*

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* Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.